

# **Exhibit A-6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

- - -

SECURITIES AND EXCHANGE )  
COMMISSION, )

Plaintiff, )

-against- ) Civil Action No.  
5:21-cv-785-XR

ROBERT J. MUELLER, DEEPROOT )  
FUNDS LLC (a/k/a dprr Funds, )  
LLC, AND POLICY SERVICES INC., )

Defendants. )

-and- )

DEEPROOT TECH LLC, DEEPROOT )  
PINBALL LLC, DEEPROOT STUDIOS LLC, )  
DEEPROOT SPORTS & ENTERTAINMENT )  
LLC, DEEPROOT RE 12621 SILICON )  
DR LLC, AND ROBERT J. MUELLER, )  
JEFFREY L. MUELLER, AND BELINDA )  
G. BREEN, AS CO-TRUSTEES OF THE )  
MB HALE OHANA REVOCABLE )  
TRUST, )

Relief Defendants. )

VIDEOTAPED DEPOSITION OF DENNIS J. CONCILLA

Wednesday, July 12, 2023

9:35 a.m.

Carlile Patchen & Murphy

950 Goodale Boulevard

Suite 200

Columbus, Ohio 43212

REPORTED BY:

SUSAN L. COOTS, RPR

REGISTERED PROFESSIONAL REPORTER

JOB No. 230712ARSI

09:58 1 MR. HULINGS: We -- we can talk about it off  
2 the record.

3 MR. NASSE: Yeah.

4 MR. HULINGS: I don't think it's actually  
09:58 5 covered by any of the current requests, but we can talk  
6 about it.

7 MR. NASSE: Yeah. We just learned about it  
8 right now.

9 MR. HULINGS: Okay.

09:58 10 BY MS. WARDEN:

11 Q Okay. So, Mr. Concilla, do you recognize the  
12 document in front of you?

13 A Yes.

14 Q Okay. What is it?

09:59 15 A It's an engagement letter that I provided to  
16 Robert Mueller in April of 2013.

17 Q Okay. Just look at the first page, sir.  
18 Is -- is that your name in the Sent -- the From line?

19 A Yes.

09:59 20 Q Okay. And you sent that email to  
21 contact@policy-services.net, correct?

22 A Yes.

23 Q And whose email address is that?

24 A I -- I don't remember, but I assume it's  
09:59 25 Policy Services.

09:59 1 Q Okay.

2 A Robert Mueller.

3 Q You assume it's Robert Mueller's email

4 address?

09:59 5 A I -- I assume, based on the caption.

6 Q Okay. And is that your signature block at the

7 bottom?

8 A Yes.

9 Q Okay. And you copied G. Russell Hagan. Who

09:59 10 is he?

11 A Russ Hagan was Robert Mueller's partner in

12 2013 at Policy Services.

13 Q And why did you copy him on this email --

14 A Because --

10:00 15 Q -- attaching an engagement letter?

16 A -- I had known Russ Hagan from a previous

17 engagement. Russ asked me to meet with he and

18 Robert Mueller in regards to their venture, and -- and

19 so I wrote this engage -- I -- I traveled to San Antonio

10:00 20 and met with them, looked at the operations, saw what

21 they were doing, and -- and then I sent them this

22 engagement letter.

23 Q Okay. So you wrote on April 22nd, "Please

24 find engagement letter attached."

10:00 25 And is -- are Pages 2 and 3 the document

10:01 1 you're looking at? So it's SEC-Pulman-RE, five zeros  
2 and 4 through 5. Is that the engagement letter?

3 A Yes.

4 Q All right. And it's dated April 22nd, 2013?

10:01 5 A Yes.

6 Q Okay. And if you look at the last page, is  
7 that your name in the signature block?

8 A Yes.

9 Q And is that your signature?

10:01 10 A It's a facsimile of my signature.

11 Q Or is that your electronic signature?

12 A It is, yes.

13 Q Okay. All right. Directing your attention to  
14 the last line of the first paragraph. It says, "We  
10:01 15 provide this letter to describe the basis on which our  
16 firm will provide legal services to you and be  
17 compensated for those services."

18 Who is the "you" referring to in that  
19 sentence?

10:01 20 A Policy Services.

21 Q Okay. And at the top, you directed the  
22 engagement letter to Policy Services, and then, under  
23 that, Robert Mueller. But who did you understand the  
24 client to be?

10:02 25 MR. HULINGS: So objection to the description

10:02 1 of the document which is inaccurate.

2 BY MS. WARDEN:

3 Q Who did you understand your client to be, sir?

4 A Policy Services.

10:02 5 Q Okay. And that's based upon what information?

6 A I met with Russ Hagan and Robert Mueller who,  
7 at the time, it was my understanding had formed Policy  
8 Services, and they had asked me to represent them with  
9 regards to certain transactions that they were  
10 anticipating.

11 Q Okay. So let me break that down. Who -- who  
12 is the "they"?

13 A "They" is Robert Mueller and Russ Hagan.

14 Q Okay. And they asked you to represent them  
10:02 15 personally or Policy Services?

16 A I -- I undertook the assignment to be on  
17 behalf of Policy Services.

18 Q And at any point did you represent  
19 Robert Mueller personally?

10:03 20 MR. HULINGS: So I'm going to object to the  
21 extent that that goes outside the scope -- that question  
22 goes outside the scope of the privilege waiver. I think  
23 the -- we're okay with that question being asked through  
24 2018. But any time after that, we object.

10:03 25 BY MS. WARDEN:

11:15 1 Q Okay. For both the dGRD and PPM -- and  
2 557 Funds?

3 MR. HULINGS: Same objections.

4 A Yes.

11:15 5 Q And what is the equity approach that  
6 Mr. Mueller's referring to?

7 A You know, I don't -- I'm not sure I remember.  
8 I -- I -- I -- I -- I -- I think -- Well, I'd only be  
9 speculating. I -- I don't recall really.

11:16 10 Q Okay. I'm going to hand you Tab 19 which I'll  
11 mark as Exhibit 91.

12 (Deposition Exhibit 91 was marked for  
13 identification.)

14 BY MS. WARDEN:

11:16 15 Q Do you recognize this document?

16 A No.

17 Q Does it appear to be an August 12, 2015, email  
18 from you to Mr. Mueller?

19 A Yes.

11:16 20 Q Okay. You wrote, "In my mind, this is now  
21 ready."

22 And it says there's attachment of a dGRD PPM,  
23 and that appears to be attached to this email  
24 MUELLER-2650 through 2667.

11:17 25 Do you see --

11:17 1 A Yes.

2 Q -- the dGRD PPM?

3 What did you mean by, in your mind, this is  
4 now ready.

11:17 5 A I had made all changes and comments that I  
6 thought were necessary.

7 Q Okay. And so would you say the comment, "In  
8 my mind, this is now ready," were you providing  
9 Mr. Mueller legal advice?

11:17 10 MR. HULINGS: Objection. That's pretty vague.

11 A Yes.

12 Q Okay. And was -- was your comment in the  
13 email, "In my mind, this is now ready," was that based  
14 upon the information that Mr. Mueller had provided to  
11:17 15 you at that time?

16 MR. HULINGS: Objection. Vague as to "at that  
17 time."

18 BY MS. WARDEN:

19 Q You can answer.

11:17 20 A Yes.

21 Q Sorry?

22 A Yes.

23 Q And if you later learned that -- If

24 Mr. Mueller came to you after August 12th, 2015, with

11:18 25 new information, how would you advise him? How would



11:20 1 your legal advice regarding them?

2 A It -- it --

3 MR. HULINGS: Hold on. Object -- objection.  
4 Vague. Calls for a hypothetical.

11:20 5 You can answer, if you can.

6 A If the changes were material to the offering.

7 Q Okay. And what do you mean by "material"?

8 A I mean material. It's a standard. If -- if  
9 the change is material. If -- if -- if the new  
11:20 10 information materially changed the deal. I mean, if  
11 they changed their phone number, no.

12 Q Okay. Handing you Tab 22, which I'll mark as  
13 Exhibit 92.

14 (Deposition Exhibit 92 was marked for  
11:21 15 identification.)

16 BY MS. WARDEN:

17 Q Okay. Mr. Concilla, do you recognize this  
18 document?

19 A No.

11:21 20 Q Is it fair to say it's a September 1, 2015,  
21 email from -- emails between you and Mr. Mueller?

22 A Yes.

23 Q All right. Is the reference -- Okay. So you  
24 write, at 1:05 p.m., "Okay. Andy and I have declared  
11:21 25 the 575 done."

11:21 1 Is the reference to Andy Mr. Federico?

2 A Yes.

3 Q All right. And what did you mean by, "The  
4 575 is done"?

11:22 5 A It was -- In our mind, it was completed.

6 Q Okay. And it was completed. Is it fair to  
7 say it was completed based upon the information that  
8 Mr. Mueller had provided to you as of September 1st,  
9 2015?

11:22 10 MR. HULINGS: Objection. Vague.

11 A Yes.

12 Q And you're relying on Mr. Mueller to give you  
13 complete and accurate information, correct?

14 MR. HULINGS: Objection. Leading and vague.

11:22 15 A Yes.

16 Q And if you later learned additional  
17 information that would have changed your legal advice to  
18 Mr. Mueller, would that impact the 575 PPM?

19 MR. HULINGS: Vague.

11:22 20 MS. SANSALONE: Objection.

21 A It -- it --

22 MR. HULINGS: It calls for -- it calls for  
23 speculation. It's vague.

24 A I'm sorry. It's too vague.

11:22 25 MR. HULINGS: You can answer.

11:26 1 premiums because, as you know, it's possible."

2 What are -- what are you referring to here?

3 A The -- the -- Okay. The -- the theory of --  
4 of investing in a life settlement is that you're  
11:27 5 purchasing an interest in someone else's insurance  
6 policy. You'll -- you'll be paid the -- the amount of  
7 the policy upon the death of that individual. Okay.

8 You have to set aside a certain amount of  
9 money to continue paying the premiums. If you have set  
11:27 10 aside an in -- an insufficient amount of money, then you  
11 may have to go back to the investor to say, We need more  
12 money to continue paying the premiums to protect your  
13 investment. And that's what I'm referring to here.

14 Q Okay. And the -- Exhibit 94 is a draft  
11:28 15 deeproot Investor Presentation. Do you recall providing  
16 legal advice on Exhibit 94?

17 A Yes.

18 Q Okay. Was your legal advice on Exhibit 94  
19 limited to the information that Mr. Mueller provided to  
11:28 20 you about the 575 and dGRD Funds?

21 MR. HULINGS: Vague.

22 You can answer.

23 A Yes.

24 Q And you were relying on Mr. Mueller to give  
11:28 25 you complete and accurate information, correct?

12:11 1 Q Okay. Is that a synonym for a Reg D?

2 A Yes.

3 Q And at the bottom, do you see it's dated  
4 September 1, 2015?

12:11 5 A Yes.

6 Q Okay. So I can represent to you that in  
7 Mr. Mueller's interrogatory responses, he indicated that  
8 Exhibit 36 that you're looking at --

9 A Yes.

12:11 10 Q -- was operative between May 2015 and  
11 May 2018. So were you representing Policy Services  
12 between -- at any point between May 2015 and May 2018?

13 A Periodically.

14 Q So is the --

12:11 15 A Yes.

16 Q -- answer "Yes"?

17 A Yes.

18 Q Okay.

19 A From time to time.

12:11 20 Q All right. And do you recall advising Policy  
21 Services with respect to Exhibit 36?

22 MR. HULINGS: Objection. Vague.

23 A Not -- not specifically.

24 Q Do you regard -- do you recall providing legal  
12:12 25 advice with respect to the 575 PPMs?

12:12 1 A Yes.

2 Q Okay. And is Exhibit 36 one of the 575 PPMs  
3 that you provided advice for?

4 A I'm -- I'm unaware of there being more than  
12:12 5 one 575 Fund.

6 Q Okay. All right. So turning your attention  
7 to Page 6.

8 A Page -- Page 6 as in the numbering pages or in  
9 the -- in the --

12:12 10 Q Sorry. That was my PDF Page 6. So 14502.  
11 Hold on. So page 6 of 13 on the bottom. So  
12 SEC-DEEPROOT-E-0014505.

13 A Yeah. Got it. Yes.

14 Q Are you aware of more than one 575 Fund PPM?

12:13 15 A I am -- I am not aware of more than one  
16 575 PPM.

17 Q Did Mr. Mueller ever tell you that there was  
18 more than one 575 PPM?

19 A I don't recall.

12:13 20 Q Okay. All right. So if you look at the  
21 bottom of Bates 14505, it -- Under the category, Life  
22 Policies, it says, "We will invest in Life Policies, AKA  
23 Life Settlements, which are sales to third parties of  
24 existing life insurance contracts held on insureds who  
12:13 25 are 65 years of age or older."

13:18 1 MS. SANSALONE: Let's -- let's move forward.

2 BY MS. WARDEN:

3 Q Mr. Concilla, did Mr. Mueller inform you that  
4 he would pay his investors in earlier funds, not the  
13:18 5 575 or dGRD Funds with 575 and dGRD investor funds?

6 MR. HULINGS: All right. So vague and  
7 ambiguous and argumentative. Assumes facts not in  
8 evidence.

9 You can answer, if you can.

13:19 10 A Money is fungible. So wherever the money is  
11 coming from, or if it's going into an account, it could  
12 be used for whatever purpose.

13 But did we have a specific discussion about  
14 what I think you're asking; paying old investors with  
13:19 15 new investor money? We did not.

16 Q Okay. I'm going to reask it because it's --  
17 it's -- that was muddy to me.

18 So did Mr. Mueller inform you that he would  
19 pay his inventors with earlier funds --

13:19 20 A I've already --

21 Q -- with 575 and dGRD investor funds?

22 MR. HULINGS: Okay. So same objections as  
23 asserted to the previous question. And asked and  
24 answered.

13:19 25 A I'm -- I'm confused. You're saying his

14:32 1 MR. HULINGS: Vague and ambiguous. Assumes  
2 facts not in evidence. Argumentative. Misleading.

3 A Operational expenses could be nominal  
4 expenses.

14:32 5 Q Well, how -- how -- how would you define  
6 operational expenses?

7 A Again -- again, expenses that are associated  
8 with day-to-day operations. Did the electric bill get  
9 paid? Did the phone bill get paid? Those are all  
14:33 10 operational expenses.

11 Q Did Mr. Mueller inform you that he would use  
12 575 and dGRD investor funds to pay off credit card  
13 purchases for personal expenses?

14 MR. HULINGS: So vague and ambiguous. Assumes  
14:33 15 facts not in evidence. Argumentative. Misleading.  
16 You can answer.

17 A No.

18 Q And just to follow up, are -- are investor  
19 payments operational expenses?

14:33 20 MR. HULINGS: Vague and ambiguous.  
21 Argumentative. Calls for a legal conclusion.

22 A I think they could be.

23 Q And did Mr. Mueller inform you that 575 and  
24 dGRD investor funds would be used to pay for investor  
14:34 25 payments?

14:35 1 Q Did Mr. Mueller inform you that he would use  
2 575 and dGRD investor funds to initiate cash transfers  
3 for personal expenses?

4 MR. HULINGS: So same set of -- Well, let me  
14:35 5 repeat them. Calls for -- facts -- relies on facts not  
6 in evidence. It's argumentative. It's vague and  
7 misleading.

8 You can answer.

9 A No.

14:35 10 Q Could payments from the Company Advance be  
11 used to pay investment returns?

12 MR. HULINGS: So hold on. That's -- that's  
13 vague and ambiguous. And argumentative. And calls for  
14 a legal conclusion.

14:36 15 A Say it again, please. Could --

16 Q Could payments from the Company Advance be  
17 used to pay investment returns?

18 MR. HULINGS: Same objections.

19 A I think they could. Yes.

14:36 20 Q Like, pay the payouts at the end of the term?  
21 At the end of an investor's term.

22 MR. HULINGS: Asked and answered. Vague and  
23 ambiguous.

24 A Yeah. I'm sorry. I can't -- I don't --  
14:36 25 I don't understand the question because you're saying



15:18 1 Argumentative.

2 BY MR. HULINGS:

3 Q You can answer.

4 A I -- I don't -- I think it's unlikely that  
15:18 5 that conversation ever took place.

6 Q All right. Ask a little bit about -- You --  
7 you just testified that it would not be proper for --  
8 Let me rephrase.

9 You were just asked questions about your  
15:19 10 Declaration. Do you recall that?

11 A I do.

12 Q And one --

13 A I remember that much.

14 Q One of the questions concerned whether or not  
15:19 15 it was proper to use new investor funds to pay old  
16 investors.

17 A Correct.

18 Q Do you recall that?

19 And you made a distinction, based on the way  
15:19 20 the question was asked, about writing the word "solely."  
21 Do you recall that?

22 A Yes.

23 Q And what did you mean by "sole" -- why was  
24 "solely" important in your response?

15:19 25 A Because, as I explained in my Declaration, and

15:19 1 earlier here today --

2 (Telephone interruption.)

3 THE WITNESS: Sorry, this is one of those  
4 clients that won't let me retire.

15:20 5 Because if -- if -- I think it's important  
6 because, again, going back to my issue of, you know,  
7 money's fungible, if -- if -- if the underlying  
8 investments are making money and that money is coming  
9 into a bank account and new investor money is also going  
15:20 10 into that bank account, then I don't think it's improper  
11 that that money is commingled.

12 On the other hand, if there is no other money  
13 coming in from any other source, then I would -- It's my  
14 opinion that that would be improper.

15:20 15 Q So any other source -- Let me follow up on  
16 that.

17 Does it matter what kind of source the  
18 other -- Let me rephrase.

19 So could -- So what your testimony is is that,  
15:20 20 if new investor funds are put in the same bank account  
21 as any other source of funds, that bank account could be  
22 used to -- to make payments to previous investors?

23 MS. WARDEN: Objection. Mischaracterizes  
24 prior testimony.

15:21 25 MR. HULINGS: I'm asking him what his

15:21 1 testimony is so he can answer.

2 A I think that's a little too broad.

3 Q Okay.

4 A I mean, if you robbed a bank and you put it in  
15:21 5 the bank account, and then new investor money came in,  
6 no, I don't think you could use that money.

7 The PMM lays out how -- how the asset -- how  
8 the money will be invested and how the returns will  
9 be -- will -- will occur. And if that's occurring, then  
15:21 10 I think you could commingle that money. I think it's  
11 probably bad practice, but I think I could commingle  
12 that money.

13 But if there is no other source of money --

14 Q Could it be a loan? Could the other source of  
15:21 15 money that goes into the bank account from which  
16 payments to previous investors are made -- Do you need a  
17 break?

18 A No. No. No. No. I'm just thinking hard.

19 Q Okay. So if -- so if --

15:21 20 A Could it be a loan?

21 Q Yeah. So -- All right. Not a -- not a bank  
22 robbery.

23 A Okay. Okay.

24 Q But if there was a return --

15:22 25 A Uh-huh.

15:22 1 Q -- on a policy -- Let me rephrase.

2 If a policy --

3 A Matured.

4 Q -- matured --

15:22 5 A Yes.

6 Q -- and resulted in revenue that was deposited  
7 in a bank account --

8 A Yes.

9 Q -- that bank account could be used to pay  
15:22 10 previous investors?

11 A Yes.

12 MS. WARDEN: Objection. Leading.

13 BY MR. HULINGS:

14 Q Could that bank account have been used to pay  
15:22 15 previous investors?

16 A Yes.

17 Q And that bank account could be -- could that  
18 bank account be used to pay previous investors, even  
19 though new investor funds were also deposited in that  
15:22 20 bank account?

21 A Yes.

22 Q Okay. What about a loan? If deeproot took  
23 out a loan and the proceeds from that loan were placed  
24 in the bank account, could that bank account be used to  
15:22 25 pay previous investors?

15:23 1 investors could be considered expenses of the fund under  
2 the Company Advance section; is that right?

3 A I see -- I see where you're going.

4 MS. WARDEN: Objection. Mischaracterizes  
15:24 5 testimony.

6 A I think it goes back to the issue of  
7 whether -- what's the sole -- what -- what -- what is --  
8 where is the sole source of the money.

9 Q So if the Company Advance is placed in the  
15:24 10 same bank account as other revenues, could that bank  
11 account be used to pay new -- pay previous investors?

12 A If there's a reasonable expectation that the  
13 assets are paying dividends or paying interest or  
14 paying, then -- then yes.

15:24 15 Q Is it a reasonable expectation that the assets  
16 are paying dividends?

17 MS. WARDEN: Objection. Vague.

18 BY MR. HULINGS:

19 Q I haven't even finished the question yet.

15:24 20 But let me -- Could it be -- is it -- would it  
21 be acceptable if there is a reasonable expectation that  
22 the assets will at some point pay dividends?

23 MS. WARDEN: Same objection.

24 A This is a very slippery slope. I mean, I --  
15:25 25 I -- I suppose it's possible that you could do that.

15:33 1 through this pile and find it -- in which you told  
2 Mr. Mueller, "Andy and I say that the" -- something to  
3 the effect that, "Andy and I say the 575 PPM was done"?

4 A Yes.

15:34 5 Q All right. And in that PPM, it's stated that  
6 investors could select an option in which they would be  
7 paid on a monthly basis a certain amount of money?

8 A Yes.

9 Q And you're -- you're also aware that those  
15:34 10 PPMs required that that monthly payment begin 60 days  
11 after that selection is made?

12 MS. WARDEN: Objection. Vague as to  
13 "required."

14 A Yeah. Yeah, I -- I -- I believe that's  
15:34 15 correct.

16 Q And so if there were no assets of the 575 Fund  
17 when it began, and no sources of funding, other than new  
18 investor money when the 575 Fund began, where did you  
19 think the month -- the source of the funds for the  
15:34 20 monthly -- Let me rephrase.

21 You previously testified that you're not aware  
22 of any other funds provided to the 575 Fund at the time  
23 it was initiated; is that right?

24 A (Witness nodded.)

15:35 25 MS. SANSALONE: You have to answer verbally.

15:35 1 A Oh, yes. Yes.

2 Q So the -- to your knowledge, the only source  
3 of funds at the beginning for the 575 Fund was new  
4 investor money; is that right?

15:35 5 A Yes. I addressed this in an email.

6 Q All right. And you had that knowledge before  
7 you told Mr. Mueller that the 575 PPM had been approved?

8 MS. WARDEN: Objection. Asked and answered.

9 A Yes.

15:35 10 Q And so you knew that the 575 Fund had no funds  
11 in which to pay the monthly payments to 575 P investors,  
12 other than new investor funds; is that right?

13 MS. WARDEN: Objection. Leading. You just  
14 have to give me a couple seconds to do the objections.

15:35 15 Leading. Mischaracterizes prior testimony.  
16 Calls for speculation.

17 BY MR. HULINGS:

18 Q None of those are valid so you can answer.

19 MS. WARDEN: Object to that.

15:36 20 BY MR. HULINGS:

21 Q We've had a lot of depositions together, so  
22 we --

23 A Yeah, I get it. I get it. This is my first  
24 and on -- and only.

15:36 25 Q Let me -- let me actually start that over. I

15:36 1 think there's too much back and forth. Okay. All  
2 right. Let's break it in pieces.

3 So the email -- Let me put -- Give me a  
4 second.

15:36 5 Do you recall the email where it says the nine  
6 -- this is done?

7 A Yeah, I do. I recall that. Yes.

8 Q Anybody remember what number that is?

9 A No. It's a short email.

15:36 10 MS. SANSALONE: It was one of the earlier ones  
11 today.

12 MR. HULINGS: It was one of the earlier ones.

13 Ms. Warden, it's your exhibit.

14 BY MR. HULINGS:

15:36 15 Q Okay. Exhibit 92. On September 1st, 2015,  
16 you wrote an email to Mr. Mueller, stating, and I quote,  
17 "Andy and I have declared the 575 done."

18 A Uh-huh.

19 Q Do you recall that?

15:37 20 A Yes.

21 Q And then it next says, Remember, of course --  
22 "Remembering, of course, that our job is to make sure it  
23 is compliant with the law and the disclosures are  
24 adequate."

15:37 25 Do you see that?



15:37 1 A Yes.

2 Q So when you -- when you are telling  
3 Mr. Mueller that the 575 is done, what are you  
4 communicating to him?

15:37 5 A That the PPM is -- is completed and -- and  
6 fulfills his obligation on -- under the law.

7 Q So in the next sentence, it says, your job is  
8 to make sure it is compliant with the law and  
9 disclosures are adequate.

15:37 10 A Correct.

11 Q So are you communicating to Mr. Mueller that  
12 the 575 PPM is compliant with the law and the  
13 disclosures are adequate based on the information  
14 available to you at the time?

15:38 15 A Yes.

16 MS. WARDEN: Objection. Asked and answered.  
17 BY MR. HULINGS:

18 Q Okay. And that was as of September 1st, 2015,  
19 correct?

15:38 20 A Yes.

21 Q All right. So prior to that date, you knew  
22 that the 575 Fund had no assets?

23 MS. WARDEN: Objection. Asked and answered.

24 MR. HULINGS: Yeah. You objected so I'm  
15:38 25 repackaging it to -- to deal with the objections.

15:38 1 BY MR. HULINGS:

2 Q Do you -- do you recall that?

3 A Yes.

4 Q And we're going to do this with an exhibit,  
15:38 5 but it's one of the many.

6 A Can we do it by committee?

7 Q Yeah. And we're going to take a break in a  
8 second, I promise.

9 A Okay.

15:38 10 Q You can probably see where I'm going with  
11 this? So you --

12 A I -- I -- I do, and --

13 Q So let me -- let me ask the question to -- so  
14 that it's teed up properly.

15:39 15 A Do you want me to ask the question?

16 Q No, I can get there. I'm trying to do it in a  
17 way that -- that minimizes the potential for objections.  
18 Okay?

19 A Okay.

15:39 20 Q So before September 1, 2015, you knew that the  
21 575 P -- Let me rephrase.

22 Prior to September 1, 2015, you knew that the  
23 only potential source of funds from which the 575 Fund  
24 could make a payment to 575 P investors within 60 days  
15:39 25 was new investor funds; is that right?

15:58 1 A I honestly don't. I -- I don't.

2 Q So --

3 A It was -- it was a couple years after the  
4 engagement started.

15:58 5 Q So it's fair to say approximately 2015 through  
6 the end of your representation, Mr. Mueller was the sole  
7 owner of all of the entities we've collectively been  
8 calling the deeproot family of companies?

9 A Yes.

15:58 10 Q Okay. And during that time, you provided  
11 legal advice to Robert Mueller?

12 A Yes.

13 Q And that was after Mr. Mueller requested legal  
14 advice from you?

15:58 15 A Yes.

16 Q And he was -- That legal advice that you  
17 provided to Mr. Mueller, some of that could have  
18 concerned Policy Services; is that right?

19 A Yes.

15:59 20 Q Some of that advice could have concerned other  
21 entities in which he was the owner, correct?

22 A Yes.

23 Q Under those circumstances, do you think  
24 Mr. Mueller reasonably could have believed that you  
15:59 25 represented him in a personal capacity?

15:59 1 MS. WARDEN: Objection. Calls for  
2 speculation. Lack of foundation.

3 BY MR. HULINGS:

4 Q You can answer.

15:59 5 A Yes.

6 Q Okay. And, in part, because he asked for  
7 legal advice?

8 A Yes.

9 Q And you provided that legal advice?

15:59 10 A Yes.

11 Q All right. Earlier today, you mentioned that  
12 some of the documents that we've been discussing today,  
13 at least the PPMs, were based on a draft originally  
14 provided by a Texas lawyer. Do I have that right?

15:59 15 A Yes. That's my recollection.

16 Q Okay. Who provided you the draft from the  
17 Texas lawyer?

18 A Robert Mueller.

19 Q Okay. Do you remember when he provided you  
16:00 20 that draft?

21 A Right at the beginning of our representation.

22 Q So --

23 A 2013. Sometime --

24 Q Okay.

16:00 25 A -- in early 2013.

16:03 1 A It -- it -- this reminds me that, yes, there  
2 was originally a -- a debenture fund.

3 Q So the first sentence says, "Here are the  
4 final docs for the five-year fund."

16:03 5 Do you see that?

6 A Yes.

7 Q So when your -- when you send final docs to a  
8 client, what are you communicating to the client?

9 MS. WARDEN: Objection. Vague.

16:03 10 A That -- that we -- we have reviewed this and  
11 we -- and we feel that it's appropriate and adequate  
12 and -- and that you can start selling it.

13 Q So this email is representing to the  
14 recipients that it is your legal opinion that this  
16:04 15 document complies with the securities laws based on the  
16 information available to you; is that right?

17 A Yes.

18 Q Okay. And -- and part of the purpose of your  
19 representation was to review documents that are being  
16:04 20 provided to investors to ensure that they comply with  
21 the securities laws; is that right?

22 A Yes.

23 Q And that includes ensuring that -- Does that  
24 include ensuring that there -- no statements in these  
16:04 25 documents were materially misleading, based on the

16:04 1 information available to you?

2 A Yes.

3 Q If you -- Was it your practice that, if you  
4 saw some language in a PPM that you thought was  
16:05 5 inappropriate or misleading, would you inform your  
6 clients of that fact?

7 MS. WARDEN: Objection. Calls for  
8 speculation.

9 A Yes.

16:05 10 Q And during the course of your representation,  
11 or in the course of the time working with Mr. Mueller,  
12 you -- did you send him multiple drafts of PPMs that  
13 included changes that you were recommending?

14 A Yes.

16:05 15 Q To your knowledge or memory, did Mr. Mueller  
16 ever refuse to incorporate one of your proposed changes  
17 into a PPM?

18 MS. WARDEN: Objection. Vague as to "refuse."

19 A I -- I -- I -- I don't believe so, no.

16:05 20 Q All right. Did -- Do you recall whether these  
21 documents were drafted based on the draft provided by  
22 the Texas lawyer?

23 A You know, I honestly can't answer that because  
24 I -- I just remember that there was -- that I -- we'd  
16:06 25 gotten a draft and we reviewed the draft, and we felt

16:06 1 that it needed quite a bit more.

2 Q But the -- the draft that you were provided  
3 was early in the representation?

4 A Very early in the representation so it would  
16:06 5 make sense to me --

6 Q Yeah.

7 A -- that this was based off of that.

8 Q And when you review a document, make changes,  
9 and then tell a client, "This is done," does it then  
16:06 10 become your work product?

11 A I believe it does, yes.

12 Q Yeah. And so it is your legal advice to a  
13 client that the document is sufficient, complies with  
14 the law, and can be given to investors?

16:06 15 A Yes.

16 MS. WARDEN: Objection. Asks for a legal  
17 conclusion.

18 BY MR. HULINGS:

19 Q Okay. Let's look at page -- let's go to  
16:06 20 Page 2 of the -- the bottom of document will have  
21 Page 2. It's Page 6 of the PDF, but it's -- The number  
22 at the bottom will be 2.

23 And for the record, this -- Even though this  
24 particular printout, which I had to have done at a  
16:07 25 Kinko's here, doesn't have the confidential stamp on it.

16:16 1 to your clients saying it's been approved, you're  
2 communicating to them that they can spend money in a  
3 manner that is consistent with the representations in  
4 the PPMs?

16:17 5 MS. WARDEN: Objection. Leading. Misstates  
6 the evidence.

7 BY MR. HULINGS:

8 Q How do you misstate the evidence? I'm reading  
9 the document. I don't know.

16:17 10 A I was going to say, I don't know.

11 Yeah. I think the answer to your question is,  
12 yes. We're saying -- Again, remember this is business  
13 of the company.

14 Q Right.

16:17 15 A So this is the general business model of the  
16 company. And this is what we're trying -- This is what  
17 we're going to try to accomplish as a company --

18 Q Yes.

19 A -- is create this portfolio.

16:17 20 Q And so your understanding of what you were  
21 communicating to your clients was that they could spend  
22 a particular investor's money in -- in -- that didn't --  
23 Let me rephrase.

24 It was your -- what you're communicating to  
16:17 25 your clients, based on this document, is that they could



16:17 1 spend a particular investor's money in a way that didn't  
2 comply with the 60, 20, 10, 10 breakout?

3 MS. WARDEN: Objection. Mischaracterize prior  
4 testimony.

16:18 5 BY MR. HULINGS:

6 Q I'm asking for your testimony now.

7 A Okay. Okay. As -- as long as in -- as long  
8 as it mirrors this in totality, all of the investor  
9 funds meet this criteria.

16:18 10 Q Okay.

11 A And that's -- that's perfectly okay.

12 Q All right. Okay. So the next section down  
13 says Life Settlements. Do you see that?

14 A Yes.

16:18 15 Q So at some point during the time you worked  
16 with Mr. Mueller and Mr. Hagan, were they selling shares  
17 in actual life policies, do you recall?

18 A I -- I do recall, and -- and the answer is  
19 yes. There were a number of -- in -- in -- throughout  
16:18 20 that time period -- Well, there were companies that were  
21 in the business of buying viaticals. I don't -- I  
22 don't -- I don't want to get into a lengthy description  
23 of the difference.

24 But -- so this -- so this industry started  
16:19 25 during the AIDS crisis --

16:21 1 documents in a second, and I'm jumping ahead a little  
2 bit.

3 Do you recall having those communications with  
4 Mr. Mueller about why Pinball?

16:21 5 A Yes.

6 Q And -- and tell us about those conversations.

7 A That's a pretty general question, Jay.

8 Q Let me ask: When -- when did he first -- when  
9 did he first raise the idea of investing in Pinball?

16:22 10 A Gosh, I -- I actually don't remember when  
11 exactly that was. I would -- my guess is in the '15,  
12 '14/'15 period of time he raised this issue.

13 Q And did he explain to you why he thought  
14 investing in Pinball was a good investment?

16:22 15 A He -- he -- he did explain to me why he  
16 thought that that made sense.

17 Q To -- to your memory -- to your memory -- to  
18 the best of your memory, what did he tell you about why  
19 he thought it was a good investment?

16:22 20 A Well, that -- you know, that -- that  
21 pinball -- pinballs -- pinball machines were a -- a  
22 growing industry and there was a lot of interest.  
23 And -- and he for -- he knew somebody or somehow got  
24 involved with somebody that was designing pinball  
16:22 25 machines, and he thought he could -- he could be part of

16:22 1 designing the next best greatest thing in pinball  
2 machines. And that this would be a cash flow that would  
3 offset this problematic issue of about when people die.

4 We also talked a lot about, like, real estate  
16:23 5 investments and other -- and other kinds of investments.  
6 But that's what he thought.

7 Q So by the time he raised the idea of investing  
8 in pinball, had you been working together for a couple  
9 years by this point?

16:23 10 A Yeah, probably. Yeah.

11 Q So you had many conversations with Mr. Mueller  
12 over the phone and -- and at least one in person?

13 A Yes.

14 Q And based on those prior communications, did  
16:23 15 you think that Mr. Mueller was -- genuinely believed  
16 that he could make Pinball profitable when he was  
17 telling you this?

18 MS. WARDEN: Objection. Vague and ambiguous  
19 as to "genuinely believed" and "profitable."

16:23 20 A He believed that.

21 Q He told you that he thought he could make  
22 Pinball -- the Pinball business work?

23 A Yes.

24 Q And based on your experience with him, did you  
16:24 25 believe that he believed that he could make it work?

16:24 1 MS. WARDEN: Objection.  
2 MR. NASSE: Speculation.  
3 MS. WARDEN: Confusing.  
4 A Well, I believed that he believed.  
16:24 5 Q In other words, this wasn't -- this was a real  
6 business venture?  
7 A Well --  
8 MS. WARDEN: Objection as to -- Vague and  
9 ambiguous as to characterization.  
16:24 10 A It was he believed that this was a legitimate  
11 business that could produce cash flow and income.  
12 Q Okay. So that's -- Coming back to the  
13 document in front of us, that's not part of this  
14 document?  
16:24 15 A It is not.  
16 Q Okay. All right. Let's go to page -- All  
17 right. Let's see. Let's go to Page 14. I'm sorry.  
18 A I -- I see -- I see you paid for the expensive  
19 stock paper.  
16:25 20 Q I didn't. You know, I -- I -- we've done a  
21 lot of these depositions remotely, and I would have been  
22 fine doing this one remotely. You've got all your  
23 documents there and you can pick them on the fly.  
24 A Yeah. Right.  
16:25 25 Q And you realize you need a document after

17:14 1 Q -- Mr. Mueller --

2 A Yeah.

3 Q -- that he needed to restructure this fund --

4 A Yes.

17:14 5 Q -- the -- the Tech fund in a different way?

6 A Yes.

7 Q To make it simpler?

8 A Yes.

9 Q And to make it an equity fund?

17:14 10 A Yes.

11 Q All right. And in response, Mr. Mueller sends  
12 an email, which is at the top of that document, to you  
13 and Mr. Federico saying, Attached -- "See attached for  
14 the first project." For first project.

17:14 15 Do you see that?

16 A Yes.

17 Q And that -- if you recall the previous email,  
18 he said he had three projects. Do you recall that?

19 A Yes.

17:14 20 Q All right. So when he says, "for the first  
21 project," did you understand that to mean here are  
22 details regarding that first tech project that I  
23 mentioned?

24 A Yes.

17:15 25 Q All right. So you get to the attachments, you

17:15 1 have a -- a draft letter, the first page. You've got  
2 some spreadsheets, that's --

3 A Yes.

4 Q -- titled Projected Budget. Do you see that?

17:15 5 A Yes.

6 Q And the next page -- Let me just -- I'll give  
7 you a Bates number of -- which is 1551. Do you see  
8 that?

9 A I'm sorry. Next page.

17:15 10 Q It says the bot -- the Bates number is 1551.

11 A Oh, okay. Yes.

12 Q So this -- Does this appear to be  
13 Mr. Mueller's description of the business plan for  
14 deeproot Pinball?

17:15 15 A Yes.

16 Q And look at the first page. There's a summary  
17 of the history of the pinball industry. Do you see  
18 that?

19 A Yes.

17:16 20 Q The second page has a summary of the business  
21 plan. Do you see that?

22 A Yes.

23 Q And the third page has timeline and targets.  
24 Do you see that?

17:16 25 A Yes.

17:16 1 Q Fourth page has a proposed description of a  
2 potential production facility?

3 A Yes.

4 Q Fifth page has a proposed structure by the end  
17:16 5 of 2017?

6 A Yes.

7 Q And then the next page has hardware  
8 competitive advantages, and it includes a fair amount of  
9 detail about software platforms and other doc -- and  
17:16 10 other technical information?

11 A Yes.

12 Q Last page says -- or the second-to-last page  
13 says Assembly Efficiency. Do you see that?

14 A Yeah.

17:16 15 Q I'm going to stop there. Is it -- is it --  
16 does it appear from these documents to you -- Did it  
17 appear to you at the time when you received this  
18 document that Mr. Mueller had done substantial diligence  
19 into the potential pinball business?

17:17 20 MS. WARDEN: Objection. Vague as to  
21 "diligence."

22 BY MR. HULINGS:

23 Q Do you understand what the word "diligence"  
24 means?

17:17 25 A No.

17:17 1 Q Okay.

2 A Not in this context.

3 Q All right. Do you understand when --

4 A Oh, yes.

17:17 5 Q -- someone says "due diligence"?

6 A Oh, yes. Oh, I'm sorry. Yes, of course. Of

7 course.

8 Q Did it appear --

9 A Yes.

17:17 10 Q -- having reviewed this document that

11 Mr. Mueller had conducted significant due diligence into

12 whether or not Pinball would be a successful business?

13 A I have no recollection of this document. But

14 yes, now having -- having now reviewed it, I would say,

17:17 15 yeah, I -- I guess he did do a lot of homework.

16 Q Okay.

17 A Due diligence.

18 Q All right. Going to show you what has been --

19 what we're going to mark as 10 --

17:17 20 MS. WARDEN: 8.

21 MR. HULINGS: 8.

22 (Deposition Exhibit 108 was marked for

23 identification.)

24 MS. SANSALONE: Thanks.

17:17 25 BY MR. HULINGS:



17:26 1 PPM was finalized, the business structure of -- of the  
2 dGRD Fund didn't change.

3 MS. WARDEN: Objection.

4 BY MR. HULINGS:

17:26 5 Q Is that right?

6 MS. WARDEN: Lack of foundation.

7 A I don't believe it did. But you'd have to  
8 look at the documents --

9 Q Okay.

17:26 10 A -- and make that determination.

11 Q So we can -- we can go back and go through  
12 line by line --

13 A Let's not.

14 Q -- on the PPM. But let -- let me -- let me  
17:26 15 ask it this way.

16 A No.

17 Q Do you recall that the PPM for the dGRD Fund  
18 discloses that 30 percent of the asset portfolio could  
19 be spent on deeproot Tech and other affiliated entities?

17:26 20 A Yes.

21 Q All right. And you approved that PPM?

22 A Yes.

23 Q So your representation to Mr. Mueller, by  
24 approving that PPM, is it adequately described the risk  
17:27 25 that comes with the business structure as described in

17:27 1 this email?

2 A Yes.

3 Q All right. So you may have had concerns about  
4 how to describe this, but your representation to  
17:27 5 Mr. Mueller, by signing off on the dGRD PPM, is that  
6 those concerns were addressed by how it was described in  
7 the PPM?

8 MS. WARDEN: Objection. Asked and answered.

9 A Yes.

17:27 10 MR. HULINGS: All right. Okay. I'm skipping  
11 exhibits. Why don't we take a -- a shorter break.

12 THE WITNESS: I don't need a break.

13 MR. HULINGS: I do.

14 THE WITNESS: Okay.

17:27 15 THE VIDEOGRAPHER: Okay.

16 THE WITNESS: See, the young guy. The young  
17 guys needs a break.

18 MR. HULINGS: I just -- I don't want to waste  
19 your time.

17:28 20 THE WITNESS: Yeah. Yeah. That's all right.

21 MR. HULINGS: So I want to go through and find  
22 the right ones.

23 THE VIDEOGRAPHER: We're going off the record  
24 at 5:29 p.m.

17:28 25 (Recess taken.)

17:37 1 THE VIDEOGRAPHER: We're back on the record at  
2 5:38 p.m.

3 BY MR. HULINGS:

4 Q Okay. Let's look at Exhibit 35 which is an  
17:37 5 email, August 21, 2015, from Mr. Concilla to  
6 Mr. Mueller.

7 A Okay.

8 Q Mr. Concilla, do you recall seeing this  
9 document earlier today?

17:37 10 A Yes.

11 Q All right. And I want to draw your attention  
12 to the second page is an email from you, August 20,  
13 2015, at 4:46 p.m. Do you see that?

14 A Yes.

17:38 15 Q All right. So there is the -- the -- halfway  
16 down it says, "Question two is more complicated."

17 Do you see that? Reading the same --

18 A Yes.

19 Q All right. It says, "There is a fee that is  
17:38 20 paid to dR for fund management, but I don't believe  
21 there's any direct compensation to you as an executive.  
22 There were no promotional fees paid to my knowledge."

23 Do you see that?

24 A Yes.

17:38 25 Q So then if you look at the response on a

17:38 1 little further up from Mr. Mueller, August 21, 2015,  
2 9:09 a.m., about halfway down, Mr. Mueller says, "While  
3 there is no direct compensation, I indirectly received  
4 payments (and even more so Russ when he was with us,  
17:38 5 still continues)."

6 And do you see that?

7 A Yes.

8 Q All right. That's calling your attention to  
9 the next line up, which is the next page. There's an  
17:39 10 email from you dated August 21, 2015, at 9:05 a.m. to  
11 Mr. Mueller. Do you see that?

12 A Yes.

13 Q And this is the -- the email that you  
14 testified earlier where it says, "You have no choice as  
17:39 15 long as I'm your lawyer but to answer truthfully."

16 A Yes.

17 Q Do you see that?

18 Okay. Is that consistent with your other  
19 communications with Mr. -- to Mr. Mueller that you were  
17:39 20 going to make sure that PPMs were accurate to the best  
21 of your knowledge?

22 A Okay.

23 Q Okay.

24 A You're taking it out of context.

17:39 25 Q Well, I'll go through the rest and put it in

17:39 1 context.

2 A I -- I would agree with your statement, by the  
3 way.

4 Q Yes.

17:39 5 A But what I'm saying here is, you know, there's  
6 been an inquiry and you have to answer truthfully. It  
7 has nothing to do with the PPM, per se.

8 Q Okay. So a little further on, this wasn't  
9 asked. Let's -- let's talk about this. It says, "On  
17:40 10 the compensation issue again the question is there to  
11 determine whether a significant amount of the principal  
12 went to management."

13 Do you see that?

14 A Yes.

17:40 15 Q "Indirect payments are okay if you mean that  
16 you draw a salary from dR and the funds paid dR for  
17 management."

18 Do you see that?

19 A Yes.

17:40 20 Q Let's stop there before we go on to the next  
21 thing.

22 So you're telling Mr. Mueller that the  
23 575 Fund, for example --

24 A Right.

17:40 25 Q -- could pay a fee to a different deeproot

17:40 1 entity --

2 A Yes.

3 Q -- and that that deeproot entity could pay  
4 Mr. Mueller a salary?

17:40 5 A Yes.

6 Q All right. And that is your understanding of  
7 how Mr. Mueller was getting paid at this time, based on  
8 his representation to you?

9 A Okay.

17:40 10 Q Well, I guess that --

11 A I mean, that's -- I mean --

12 Q That's what's in this email.

13 A My -- Again, what I'm saying is this could --  
14 this could be one way to do it. Yes.

17:40 15 Q Okay. And then the next line says, "While  
16 it's an over generalization, the hallmark of a Ponzi  
17 scheme is large portions of the principal payments going  
18 to pay fees and salaries."

19 Do you see that?

17:41 20 A Yes.

21 Q And then you said, "Remind me again what the  
22 575 is. I thought you wanted to replace them with the  
23 FIFO deal."

24 We'll get to that in a second.

17:41 25 A Yeah.

17:41 1 Q But so the -- the question about the Ponzi --  
2 "The hallmark of a Ponzi-style scheme is large portions  
3 of the principal payments going to pay fees and salary."

4 See that?

17:41 5 A Yes.

6 Q What -- what did you understand the words  
7 "large portions" to be?

8 A A -- a majority of the funds.

9 Q Okay. So if -- so if Mr. Mueller received  
17:41 10 5 percent of the funds in salary, would be that a large  
11 portion of -- a large portion of the principal payments  
12 that is a hallmark of a Ponzi scheme?

13 MS. WARDEN: Objection. Calls for  
14 speculation. Vague and ambiguous.

17:41 15 BY MR. HULINGS:

16 Q So you said a majority -- so if it's -- put it  
17 this way. You testified that a majority of the funds  
18 would be an example --

19 A Yeah.

17:42 20 Q -- of large principal payments would be a  
21 hallmark of a Ponzi scheme.

22 A Right.

23 Q Is that right?

24 A Yes.

17:42 25 Q And so would 10 percent principal payments

17:42 1 being used for -- for compensation be -- would meet the  
2 defi -- would that meet the definition of a Ponzi scheme  
3 under this --

4 A Okay.

17:42 5 Q -- email?

6 A Let me -- let me clarify here. I will -- I  
7 will say now, for the record, that I misspoke here.

8 Q Okay.

9 A I really did. I mean, you know, we -- we --  
17:42 10 we have a tendency -- and I hate seeing that I do it.  
11 But I did it. You throw Ponzi out there as if -- as if  
12 it applies, and it doesn't always apply.

13 I -- I probably would have said, in  
14 retrospect, the hallmark of a fraud is if a substantial  
17:42 15 portion of the money is going to pay salaries and -- and  
16 expenses and not to the underlying investments.

17 Q Okay.

18 A Now, that's separate from you asked me is  
19 5 percent too much. What -- what Robert was  
17:43 20 legitimately going to be paid was for the management of  
21 the Fund. Okay. Management fees for something in  
22 excess of \$10 million, which this appears to be, would  
23 be closer to a half a percent to maybe a full percent,  
24 maybe a point and a half. 5 percent would be a very,  
17:43 25 very high management fee for a fund.



17:43 1 Q Okay. So what if the -- For this  
2 particular -- for one fund, so there are multiple funds  
3 here.

4 A There are. With multiple components, I might  
17:43 5 add.

6 Q Right.

7 A And so, you know, it's one thing to manage a  
8 portfolio of investments. Think of it as a mutual fund.  
9 It's another thing to say that I'm managing a real  
17:44 10 estate portfolio. I'm managing a tech portfolio. I'm  
11 buying a -- actively buying and selling life  
12 settlements. So, you know, it would -- it would change  
13 based on the amount of work that's actually being  
14 performed.

17:44 15 Q So it's reasonable for Mr. Mueller to take a  
16 salary for managing the Pinball business?

17 A It absolutely could be.

18 Q And --

19 A Yes.

17:44 20 Q And reasonable to get a management fee for  
21 managing the 575 Fund?

22 MS. WARDEN: Objection. Vague as to  
23 "reasonable."

24 A Again, reasonable is -- you know, again, it  
17:44 25 goes to -- again, it would go -- it would go to the --

17:44 1 an understanding of what the job duties were and how  
2 much time it took.

3 Q Yeah.

4 A And -- and skill set. Obviously, a lot of  
17:44 5 people get paid a lot of money for very little time.  
6 It's -- Some of them might be in the room.

7 (Laughter.)

8 It -- it -- it's -- it -- it goes -- it -- you  
9 know, so there's a lot that goes into what would be  
17:44 10 reasonable under the circumstances.

11 Q All right. So let's go up to the next --  
12 Mr. Mueller's response, which I don't believe you were  
13 asked about earlier. It's a little further up the page,  
14 10:26 a.m., August 21, 2015. Do you see that?

17:45 15 A Yes.

16 Q Mr. Mueller's response is, "Correct, being  
17 truthful is the only option."

18 Do you see that?

19 A Yes.

17:45 20 Q So Mr. Mueller's agreeing with you that he  
21 intends to be truthful in how things are -- how the  
22 PPMs --

23 A He --

24 Q -- describe the business?

17:45 25 MS. WARDEN: Objection. Misstates the

17:45 1 evidence.

2 A Yes.

3 Q Okay. And then he says, "Anything we put for  
4 comp would be in line or less with the PPM amount."

17:45 5 Do you see that?

6 A Yes.

7 Q When he says, "in line with the PPM amount,"  
8 did you understand that to mean the Company Advance?

9 A No.

17:46 10 Q Okay. What did you understand the PPM amount  
11 to be?

12 A Well, frankly, again, with retrospect now,  
13 I look at this and I go, the PPM doesn't say. It says  
14 that the company can take an advance for certain  
17:46 15 purposes. That's actually different than a management  
16 fee.

17 Q Right.

18 A So it -- a management fee might not -- would  
19 not come under an advance. A management fee is an  
17:46 20 ongoing cost of doing business.

21 Q And so the -- If you recall, the management  
22 fee -- or the advance told inves -- the PMM -- we can --  
23 we'll look at it in a second --

24 A Right.

17:46 25 Q -- said that the company could take 20 percent

17:49 1 MS. WARDEN: Objection. Assumes fact -- I  
2 mean -- Sorry. Calls for speculation. Leading. Vague  
3 and ambiguous. Asked and answered.

4 BY MR. HULINGS:

17:49 5 Q Like I said, I don't care. But go ahead.

6 A No.

7 Q Okay. All right. All right. So this is  
8 August 21, 2015, correct?

9 A Yes.

17:49 10 Q And by this point, you knew that Mr. Mueller  
11 was taking a salary indirectly?

12 MS. WARDEN: Objection.

13 BY MR. HULINGS:

14 Q So the --

17:49 15 MS. WARDEN: Vague as to "indirectly."

16 BY MR. HULINGS:

17 Q So he knew that --

18 A I -- I don't -- I -- I -- I'm not -- I -- I --  
19 I'm not prepared to say I knew that he was. What I did

17:50 20 know is that he could.

21 Q Okay. All right. So your legal advice to  
22 Mr. Mueller in -- and when you approved of the PPMs for  
23 the dGRD Fund and the 575 Fund, your -- the legal  
24 opinion you communicated to Mr. Mueller was that he  
17:50 25 could take a salary that was from the funds provided --

17:50 1 MS. WARDEN: Objection.

2 MR. HULINGS: Hold on.

3 BY MR. HULINGS:

4 Q -- from the funds provided by investors by the  
17:50 5 575 or dGRD Funds?

6 MS. WARDEN: Objection. Mischaracterizes  
7 prior testimony.

8 MR. HULINGS: It isn't prior testimony. It's  
9 his current testimony.

17:50 10 MS. WARDEN: Okay.

11 BY MR. HULINGS:

12 Q Go ahead.

13 A Providing it was reasonable.

14 Q Okay.

17:50 15 A I hate -- I hate to get off on a tangent here,  
16 but, you know, we're -- we've all been acting as if you  
17 open the SEC regulations and it says, Here's what a PMM  
18 must have. That -- that -- there is no such thing.  
19 What we put in a PPM is based on 100 years of  
17:51 20 litigation.

21 Q Right. Yeah.

22 A That -- and that's what forms what a  
23 securities lawyer feels is necessary to put in a PPM.  
24 So -- so no, there is no regulation that says -- As  
17:51 25 I said earlier, you don't even need a PMM. You just


CERTIFICATE

State of Ohio :  
SS:  
County of Franklin:

I, Susan L. Coots, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named DENNIS J. CONCILLA was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand and affixed my seal of office at Columbus, Ohio, on this 18th day of July, 2023.

  
\_\_\_\_\_  
SUSAN L. COOTS, Notary Public  
in and for the State of Ohio and  
Registered Professional Reporter.

My Commission Expires January 10, 2025.